vant or irrelevant. *Henderson* v. *Broomhead,* 4 Hurl. & N. 569. The main point, therefore, upon which these cases turn is whether the alleged words are pertinent or not. The instant case deals with this proposition, the Ohio supreme court holding that this is but a distinction without a difference. Mr. Justice Wanamaker, speaking for the Court, in a vigorous opinion referring to Solomon and Shakespeare, as well as Magna Charta and the Constitution, puts the problem upon public policy. He cites no cases to support the conclusion arrived at; yet the argument that these statements do damage, whether relevant to the matter concerning which they are given or not, is founded upon reason and common sense. Somewhat similar to the point here involved is that where the prosecution has been started before a magistrate upon a false and malicious affidavit, in which case, quoting the Court, "the rule is well settled in Ohio * * * that such perjured affidavit can be made the basis of action in malicious prosecution." In the principal case the Court of Appeals had said "There is no decision in Ohio directly on the question. * * * In the cases outside our state, involving the question before us, and by the text-writers, there is complete unanimity touching the doctrine that for the giving of evidence by a witness in a judicial proceeding, so long as such evidence is relevant to the matters concerning which it is given, an action will not lie against the witness, even though the evidence be false, its falsity known by the witness at the time, and that it be maliciously given."

PHYSICIANS AND SURGEONS—NEGLIGENT ADVICE—CAUSE OF ACTION.—Defendant, a physician, was employed by plaintiff to attend plaintiff's minor child. Plaintiff alleged that the defendant, knowing the child's disease was scarlet fever and contagious, negligently advised the plaintiff that it was safe to visit the child; that the plaintiff, not knowing of the contagious nature of the disease, relied upon the defendant's advice, visited the child and contracted scarlet fever to his damage. Defendant demurred. *Held,* that the complaint states a cause of action. *Skillings* v. *Allen,* (Minn., 1919), 173 N. W. 663.

The liability of a physician to respond in damages to a patient who has suffered injury from the physician's negligence is well settled. It is equally well settled that no contractual relation need have existed between plaintiff and defendant, for the liability attaches where the professional services were rendered gratuitously. *McNevins* v. *Lowe,* 40 Ill. 209. A physician is not compelled to respond to the call of a charity patient, but if he undertakes to attend said person, he assumes a duty to use reasonable care. *Becker* v. *Janinski,* 15 N. Y. Supp. 675. "The material fact (to be) alleged in the petition is that the relation of physician and patient existed between plaintiff and defendant at the time of the alleged negligence of the defendant." *Hales* v. *Raines,* 146 Mo. App. 232. But it has also been held that a physician is liable for injuries caused to one whom he was examining merely for the purpose of giving information to a third person and not for the purpose of giving treatment. *Harriott* v. *Plimpton,* 166 Mass. 585. In this case the relation of the plaintiff to the defendant was quite remote, but in *Edwards* v. *Lamb,* 69 N. H. 599, the defendant was held liable where the relation of physician

and patient did not exist between plaintiff and defendant in any sense of the word. There the defendant was held liable for negligently advising the plaintiff that there would be no danger in her dressing an infection for her husband. The principal case was apparently decided on analogy with *Edwards* v. *Lamb,* but the duty of the defendant to plaintiff seems more debatable in the principal case for the reason that in the New Hampshire case the plaintiff might be considered the assistant or nurse, thereby establishing some sort of professional relationship while in the principal case no such relation existed. The only duty which the defendant owed to the plaintiff, by reason of being employed to give medical treatment to the plaintiff's child, was the contractual duty to apply his skill for the benefit of the child. However, this point apparently did not trouble the Minnesota court which relied upon the broad general principle of tort liability stated in *Depue* v. *Flatau,* 100 Minn. 299, that "whenever a person is placed in such a position with regard to another that it is obvious that, if he does not use due care in his own conduct, he will cause injury to that person, the duty at once arises to exercise care commensurate with the situation in which he thus finds himself, and with which he is confronted, to avoid such danger, and a negligent failure to perform the duty renders him liable for the consequence of his neglect." See also *Heaven* v. *Pender,* L. R. 11 Q. B. Div. 503. It is clear that, although originally defendant owed the plaintiff no more than a contractual duty, he, by assuming to advise the plaintiff, imposed upon himself a duty to use reasonable care in so doing. See *Black* v. *N. Y., New Haven & Hartford R. Co.,* 193 Mass. 448. The principal case is an excellent example of increasing favor of courts toward the principle quoted from *Depue* v. *Flatau, supra. Cf. Tustesen* v. *Penn. R. Co.* (N. J. 1919), 106 Atl. 137.

POSSESSION AND RIGHT OF POSSESSION OF A GROWING CROP.—The plaintiff owned apple trees growing eight feet from his boundary line. The branches of these trees overhung the defendant's land. The defendant picked apples off the overhanging branches and sold them. Plaintiff sued for damages for conversion. *Held,* the defendant is guilty of conversion and liable to the owner for the value of the apples. *Mills* v. *Brooker* (1919), v K. B. 555.

The decision is in perfect accord with a number of American decisions. *Cf. Lyman* v. *Hale* (1836), 11 Conn. 177; also TIFFANY, REAL PROPERTY, page 532, note 80, and the case would therefore be scarcely worthy of note, except for the court's complete refutation of the ingenious misuse by counsel of the statement in POLLOCK AND WRIGHT, ON POSSESSION, p. 230. It is there said that trespass to a chattel cannot be committed by severing and carrying away a growing crop, for possession of the chattel cannot come into existence until the thing becomes a chattel and as the carrying away and the converting are one continuous act there is no trespass to chattels as such. Neither is there a trespass to realty as the defendant had the right to lop the overhanging branches. The court answered these arguments by showing that the right to lop rests upon the right of the defendant to abate the nuisance caused by the growth of the branches over the defendant's land, but that this right cannot be used as a basis for a right of appropriation of the prop-